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10/057,516

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Joel L. Wolf

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04/03/2006

EXAMINER

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ART UNIT

PAPER NUMBER

2142

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/057,516

Applicant(s)

WOLF ET AL.

Examiner

Michael D. Meucci

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the Request for Continued Examination (RCE) filed 23 December 2005.

#### ***Claim Objections***

2. Claims 1 and 9 objected to because of the following informalities: Claims 1 and 9 are non-compliant in that the previous amendments to the claims filed 27 June 2005 had removed the word "a" on line 4 of claim 1 and line 5 of claim 9, however "a" remains with strikethrough in the current version of the claims. The examiner has forgone sending the non-compliant notice assuming a good faith correction of that matter is provided. Appropriate correction is required.

#### ***Response to Amendment***

3. Examiner acknowledges the amendments made to claims 3, 8, 11, and 16 to overcome objections. Accordingly, these objections have been withdrawn.
4. Examiner acknowledges the amendments made to claims 3, 8, 11, and 16 to overcome the 35 U.S.C. 112, second paragraph rejections. Accordingly, these rejections have been withdrawn.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 7, 9-10, and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (U.S. 6,697,849 B1) in view of Pulley et al. (U.S. 2002/0087679 A1) hereinafter referred to as Pulley.

a. As per claims 1 and 9, Carlson teaches: categorizing customer requests into a plurality of categories, said categories comprising shareable customer requests which can be processed by servers of different websites and unshareable customer requests which can not be processed by servers of different websites (line 65 of column 14 through line 10 of column 15, lines 29-36 of column 15, and Fig. 14) [wherein "sticky" requests are regarded as the unshareable customer requests]; routing said shareable customer requests such that any of said servers may process shareable customer requests received from different said websites (lines 47-57 of column 12, line 66 of column 13 through line 6 of column 14, lines 36-48 of column 14, and Fig. 7); and routing said unshareable customer requests from specific said websites only to specific servers to which said specific websites have been assigned (lines 11-28 of column 15).

Carlson does not explicitly teach: the requests are received from a plurality of websites. However, Pulley discloses: "This also allows for more streamlined aggregation when web farms are used, as all of the hits that are transmitted to all of the

different servers of the web farm for the page information generate hit level data at the same instrumentation server," (paragraph [0079] on page 6). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the requests received from a plurality of websites. "Thus, rather than having to access data from each of the different servers of the web farm, data can be accessed from a single instrumentation server. Finally, servers that support multiple different websites can use the active controls 106 to transmit the hit level data to different instrumentation servers for each such different website, by using different active control content," (paragraph [0079] on page 6 of Pulley). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the requests received from a plurality of websites in the system as taught by Carlson.

b. As per claims 2 and 10, Carlson teaches: a Goal procedure comprising determining, for each said customer request, an optimal server from among said servers to which each said customer request is to be assigned so as to minimize an average customer response time at any given moment, given said assignment of said websites to said servers and a current customer request load (lines 12 of column 11 through line 26 of column 12, line 36-63 of column 14, and Fig. 5).

c. As per claims 7 and 15, Carlson teaches: examining the next customer request; invoking said Goal procedure in order to determine which server is the optimal server to currently process said next customer request; and dispatching said next customer request to said optimal server (lines 59-67 of column 4 lines 47-57 of column 12, Fig. 8, and Fig. 9).

7. Claims 5 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson and Pulley as applied to claim 1 above, in view of Lomet (U.S. 5,806,065).

Carlson does not explicitly teach: the static procedure assigning specific websites to specific servers for the purpose of processing unsharable customer requests. However, Lomet discloses: "The data is distributed over the servers according to a distribution policy that specifies which server site is to host a new data page. Example distribution policies include opportunistic, randomized, and range. An 'opportunistic' distribution policy chooses the same server site at which the node is split as the site to host the new page created by the node split," (lines 38-44 of column 15). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the static procedure assign specific websites to specific servers for the purpose of processing unsharable customer requests. "This policy reduces communications cost by keeping the split pages together at the same site. In a 'randomized' distribution policy, the server site chosen for any newly created page is based on a randomization process that uniformly distributes the load across all of the sites," (lines 44-48 of column 15 in Lomet). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the static procedure assign specific websites to specific servers for the purpose of processing unsharable customer requests in the system as taught by Carlson.

8. Claims 6 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson, Pulley, and Lomet as applied to claim 5 above, further in view of Gilbert et al. (U.S. 6,771,595 B1) hereinafter referred to as Gilbert.

Carlson does not explicitly teach: the static procedure assigns websites to specific servers based upon forecasted demand for customer requests from each said website. However, Gilbert discloses: "An expert system 33 is used by the resource controller 34 to allocate network resources according to predicted future traffic patterns," (lines 46-48 of column 3). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the static procedure assign websites to specific servers based upon forecasted demand for customer requests from each website. "Future resource allocation is based on traffic patterns currently being monitored by the statistic monitoring agent," (lines 48-50 of column 3 in Gilbert). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the static procedure assign websites to specific servers based upon forecasted demand for customer requests from each website in the system as taught by Carlson and Lomet.

9. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Pulley and Lomet.

Carlson teaches: means for receiving customer requests from customer (abstract and lines 40-43 of column 4); means for processing said customer requests to produce responses (abstract and lines 29-52 of column 5); means for transmitting said

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responses to said customers (abstract); means for categorizing said customer requests into shareable customer requests and unshareable customer requests (line 65 of column 14 through line 10 of column 15, lines 29-36 of column 15, and Fig. 14) [wherein "sticky" requests are regarded as the unshareable customer requests]; a network dispatcher comprising means for procedure, and a dynamic procedure (abstract, Fig. 1, and Fig. 2A-2C); said Goal procedure comprising determining, for each said customer request, an optimal server from among said servers to which each said customer request is to be assigned so as to executing a goal procedure, a static minimize an average customer response time at any given moment, given said assignment of said websites to said servers and a current customer request load, wherein said shareable customer requests may be assigned to any said server and wherein said unshareable customer requests may only be assigned to specific servers depending on which said website said unshareable customer request originated (lines 12 of column 11 through line 26 of column 12, line 36-63 of column 14, and Fig. 5); and said dynamic procedure comprising: examining the next customer request; involving said Goal procedure in order to determine which server is the optimal server to currently process said next customer request; and dispatching said next customer request to said optimal server (lines 59-67 of column 4 lines 47-57 of column 12, Fig. 8, and Fig. 9).

Carlson does not explicitly teach: the requests are received from a plurality of websites. However, Pulley discloses: "This also allows for more streamlined aggregation when web farms are used, as all of the hits that are transmitted to all of the different servers of the web farm for the page information generate hit level data at the

same instrumentation server," (paragraph [0079] on page 6). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the requests received from a plurality of websites. "Thus, rather than having to access data from each of the different servers of the web farm, data can be accessed from a single instrumentation server. Finally, servers that support multiple different websites can use the active controls 106 to transmit the hit level data to different instrumentation servers for each such different website, by using different active control content," (paragraph [0079] on page 6 of Pulley). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the requests received from a plurality of websites in the system as taught by Carlson.

Carlson does not explicitly teach: said static procedure comprising assigning specific said websites to specific said servers. However, Lomet discloses: "The data is distributed over the servers according to a distribution policy that specifies which server site is to host a new data page. Example distribution policies include opportunistic, randomized, and range. An 'opportunistic' distribution policy chooses the same server site at which the node is split as the site to host the new page created by the node split," (lines 38-44 of column 15). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the static procedure assign specific websites to specific servers. "This policy reduces communications cost by keeping the split pages together at the same site. In a 'randomized' distribution policy, the server site chosen for any newly created page is based on a randomization process that uniformly distributes the load across all of the sites," (lines 44-48 of column 15 in

Lomet). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the static procedure assign specific websites to specific servers in the system as taught by Carlson.

### ***Allowable Subject Matter***

10. The following is a statement of reasons for the indication of allowable subject matter: The functions disclosed in claims 3, 8, 11, and 16 pertaining to the goal procedure could not be found in the prior art.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1 and 9 have been considered but are moot in view of the new ground(s) of rejection.

12. The applicant's arguments pertaining to claims 5-6, 13-14, and 17 are similar in nature to those pertaining to claims 1 and 9. These arguments have been considered but are moot in view of new grounds of rejection.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lehew et al. (U.S. 6,976,077 B1) discloses distributing multiple websites across multiple servers.

Luke et al. (U.S. 6,985,956 B2) discloses categorizing requests in a load balancing system.

Valenti (U.S. 7,000,007 B1) discloses information distribution to multiple servers.

Zhu et al. (U.S. 2005/0198141 A1) discloses multiple webpages on multiple servers.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Meucci at (571) 272-3892. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell, can be reached at (571) 272-3868. The fax phone number for this Group is 571-273-8300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [michael.meucci@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG .89.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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